

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DENNIS TOBY,	:	CASE NO. 3:11-CV-00075
	:	
Petitioner	:	(Judge Caputo)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
JOSEPH MAZERKIWICZ,	:	
	:	
Respondent	:	

REPORT AND RECOMMENDATION

On January 11, 2011, the petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner was given the notice required by *Mason v. Meyers*, 208 F.3d 414 (3d Cir. 2000), and ordered to inform the court how he elects to proceed. On February 7, 2011, the petitioner informed the court that he elects to have his petition ruled upon as filed.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, we review the petition to determine whether it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.

The petitioner is challenging his conviction and sentence from the Court of Common Pleas of York County. The petitioner

raises the following four claims in the petition: the trial court erred in refusing to instruct the jury on the offense of involuntary manslaughter; the trial court abused its discretion in sentencing the petitioner to an aggregate term of imprisonment of 27½ to 55 years; the trial court abused its discretion in refusing to transfer the case to the juvenile court; and the trial court erred in refusing to instruct the jury on the defense of duress.

"In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). Federal habeas corpus relief does not lie for errors of state law. *Id.* at 67.

None of the petitioner's claims are framed as claims of a violation of the Constitution, laws or treaties of the United States. The petitioner's claims are reasonably construed as claims of violation of Pennsylvania law. State laws claims are not cognizable as federal habeas corpus claims.

Because it plainly appears from the petition that the petitioner is not entitled to habeas corpus relief, it is

recommended that the petition be dismissed and that the case file be closed.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: February 11, 2011.